IN THE

Supreme Court of the United States.

October Term, 1902.

THE UNITED STATES, *Appellant*,
v.
JOHN C. SWEET. } No. 236.

BRIEF FOR APPELLEE.

I. Statement of the Case.

This is a claim of an officer of the army for travel pay, on discharge from the military service of the United States, from the place of his discharge to the place of his residence and muster into the service.

The claim is based upon section 1289 of the Revised Statutes, which is as follows:

"When an officer is discharged from the service, except by way of punishment for an offense, he shall be allowed transportation and subsistence from the place of his discharge to the place of his residence at the time of his appointment or to the place of his original muster into the service. The Government may furnish the same in kind, but in case it shall not do so, he shall be allowed travel-pay and commutation of subsistence, according to his rank, for such time as may be sufficient for him to travel from the place of discharge to the place of his residence, or original muster into service, computed at the rate of one day for every twenty miles."

The facts were found by the Court of Claims as follows (Rec. pp. 2, 3):

"1. Claimant was mustered into the military service of the United States at Camp Ramsey, in the city of St. Paul, in the State of Minnesota, his place of residence then being Minneapolis, in said State, on the 17th day of August, 1898, as 2d lieutenant in Company A, 15th Regiment Minnesota Volunteers.

"He served honestly and faithfully in said regiment within the limits of the United States until the 15th day of October, 1898, when he was honorably discharged the service under Special Orders, No. 244, Headquarters of the Army, as follows:

'HEADQUARTERS OF THE ARMY,

'SPECIAL ORDERS, 'ADJUTANT-GENERAL'S OFFICE,
'No. 244. 'WASHINGTON, *October 15, 1898.*

'93. By direction of the Secretary of War, the following-named officers, having tendered their resignations, are honorably discharged the service of the United States, to take effect this date.

'Captain S. Schieffelin Stebbins, 12th New York Volunteer Infantry.

'Second Lieutenant John C. Sweet, 15th Minnesota Volunteer Infantry.

'By command of Major-General Miles:

'H. C. CORBIN,
'*Adjutant-General.*'

"When discharged he was with his regiment in line of duty at Camp Meade, Pa., which is distant from the claimant's residence, Minneapolis, Minn., or his place of muster in St. Paul, Minn., 1,147 miles.

"3. His daily rate of pay at the time of muster out and discharge was $3.89.

"4. The claimant was not furnished transportation or subsistence in kind, but returned to his residence at Minneapolis, Minnesota, at his own expense. Nor has he been paid travel pay or commutation of subsistence."

The court gave judgment in his favor for the amount of his travel pay at the statutory rate, amounting to two hundred and twenty-two dollars and eighty-nine cents ($222.89) (rec. p. 3).

The United States thereupon appealed (rec. p. 3).

II. Brief of Argument.

No opinion was delivered by the Court of Claims in this case, doubtless for the reason that the case was considered to be, in all respects, identical in principle with that of Peter W. Barnett, which was decided at the same time, and in which a full opinion was delivered. The only difference between the two cases consists in the fact that Barnett was an enlisted man, whose right to travel pay depended upon section 1290 of the Revised Statutes, while the present claimant, John C. Sweet, was an officer, whose right depends upon section 1289.

Comparison of the two sections shows that, while there is a slight difference of language, it does not affect the question involved in the present case. The officer, equally with the enlisted man, is entitled to the statutory allowance for travel on discharge, "except by way of punishment for an offense."

The *Barnett* case immediately precedes the present one on the calendar of this court. The question whether an enlisted man, discharged at his own request and not by way of punishment for an offense, is entitled to his traveling allowances, is discussed in the opinion of the Court of Claims in that case, and in our brief submitted in this court. Precisely the same considerations apply to the claim of an officer, discharged upon tender of his resignation, to the travel allowance, under section 1289.

For the reasons assigned by us in the *Barnett* case, it is submitted that the judgment of the Court of Claims in this case is correct and should be affirmed.

GEORGE A. KING
WILLIAM B. KING,
Attorneys for Appellee.

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